IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 11571 of 2007(C)

PETITIONER:
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1. M/S. TRIPTHI LIQUORS,
IRITTY, KANNUR DISTRICT, REPRESENTED BY
MANAGING PARTNER, JOY K.JOSEPH,
NANJILATH HOUSE, AYARKUNNAM VILLAGE,
KOTTAYAM DISTRICT.

2. JACOB MATHEW,
MADATHIL PUTHENPURAYIL,
AYARKUNNAM VILLAGE, KOTTAYAM DISTRICT.

BY ADV. SRI.K.M.VARGHESE

RESPONDENTS:
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1. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

2. DEPUTY COMMISSIONER OF SALE TAX,
COMMERCIAL TAXES, KANNUR.

3. SALE TAX OFFICER, KUTHUPARAMBA,
KANNUR DISTRICT.

4. DEPUTY TAHSILDAR(R.R), KOTTAYAM.

5. DEPUTY TAHSILDAR(R.R), MEENACHIL,
KOTTAYAM.

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE APPLICATION DT.28.12.99 SUBMITTED TO RESPONDENT NO.2.

P2: TRUE COPY OF THE PROCEEDINGS DT.19.10.2001 OF TAHSILDAR, MUVATTUPUZHA.

P3: TRUE COPY OF ORDER DT.1.4.2002 IN CMP NO.63451/2001 IN O.P. NO.38651/2001 OF THIS HON'BLE COURT.

P4: TRUE COPY OF JUDGMENT DT.18.1.2005 IN O.P. NO.38651/2001 OF .DO.

P5: TRUE COPY OF ORDER DT.5.2.2005 PASSED BY RESPONDENT NO.3.

P6: TRUE COPY OF JUDGMENT DT.21.2.2005 IN W.P.C. NO.5892/2005 OF THIS HON'BLE COURT.

P7: TRUE COPY OF REPRESENTATION DT.3.4.2006 SUBMITTED BY 1ST PETITIONER BEFORE R1.

P8: TRUE COPY OF REVISION PETITION DT.9.4.2006 PENDING ON THE FILE OF RESPONDENT NO.1.

P9: TRUE COPY OF JUDGMENT DT.8.8.2006 IN WPC NO.20972/2006.

P10: TRUE COPY OF DEMAND DRAFT DT.28.8.2006 FOR RS.6 LAKHS SUBMITTED TO THE SALES TAX OFFICER, KUTHUPARAMBA.

P11: TRUE COPY OF ORDER DT.16.11.2006 ISSUED BY RESPONDENT NO.2.

P12: TRUE COPY OF MEMORANDUM OF REVISION DT.15.11.2006 FILED BY PETITIONER NO.1.

P13: TRUE COPY OF JUDGMENT DT.19.12.2006 IN WPC NO.33669/2006.

P14: TRUE COPY OF ORDER DT.24.1.2007 ISSUED BY R1.

P15: TRUE COPY OF NOTICE DT.6.3.2007 ISSUED BY R4.

P16: TRUE COPY OF PORTION OF MALAYALA MANORAMA DAILY DT.18.3.2007.

P17: TRUE COPY OF REPRESENTATION DT.26.3.2007 SUBMITTED BY PETITIONER TO THE COMMISSIONER OF TAXES.

P18: TRUE COPY OF THE DEMAND DRAFT DT.9.4.2007 FOR RS.8 LAKHS SUBMITTED TO THE SALES TAX OFFICER, KUTHUPARAMBA.

P19: .DO. FOR RS.27,800/- .DO.

P20: TRUE COPY OF THE SECURITY BOND DT.9.4.2007 EXECUTED BY PETITIONER.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.11571 of 2007

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Dated this the 2nd day of July, 2007.

JUDGMENT

The petitioners are challenging Ext.P15 recovery proceedings for recovery of arrears of sales tax of Rs.16,55,586/- together with interest. First petitioner was the licencee and second petitioner executed solvency for payment of arrears of tax. The arrears of tax is payable for the year 1993-94 which pertains to abkari business carried on by first petitioner. Even though second petitioner has a case that he is only a namelender and was not a beneficiary of the business, having regard to the admitted facts and relief prayed for, I do not think this court should enter into any finding on this. Tax payable as per assessment order was only Rs.7,87,000/-. Since tax was not paid, interest started accruing at the rate of 2% per month as provided under Section 23(3) of the KGST Act. However, on 29.1.2002 the property of one of the partners was sold and an amount ofRs.7,98,784/- was recovered by the department. This is acknowledged in Ext.P5 proceedings issued by the Assessing Officer. Since recovery and consequent litigation continued pursuant to Ext.P9 judgment dated 8.8.2006, the first petitioner paid Rs.6 lakhs which is also acknowledged by the Department. This W.P.

was filed against Ext.P15 when the outstanding liability was Rs.16,55,586/-. Pursuant to interim order dated 3.4.2007 petitioners have paid 50% of the amount due under Ext.P15 i.e. Rs.8,27,800/-. Thus according to the petitioners, the total payment was Rs.22,67,624/- as against original tax liability of RS.7,80,000/-. Government Pleader submitted that credit given towards tax and interest is Rs.22,25,784/- which obviously means that an amount of around Rs.42,000/- is adjusted towards collection charges by the Government. From 1999 onwards Government has declared amnesty facility reducing 60% interest for settlement of liability. The grievance of the petitioners is that instead of treating recoveries as payment under amnesty scheme, the department went on adjusting recoveries against interest under Section 55(c) of the Act leaving the matter unsettled. I find the grievance of the petitioners is quite genuine because if amnesty benefit for any year was granted and recoveries credited towards tax, then the liability would have been over long back. The interest rebate available under amnesty scheme was 60%. Even if the credit that has gone into the account of the defaulter as stated by Government Pleader is only Rs.22,25,784/- as against Rs.22,67,624/- recovered from petitioner, the said amount accounts for full tax and double the amount of tax towards interest. In other words, the entire arrears of tax together with average 12% interest

per annum for 13 years that is, from the end of the assessment year itself which is more than liability due under amnesty scheme, is recovered from the petitioners. In the circumstances, W.P. is allowed quashing all recovery proceedings against the petitioners and other partners with direction to the respondents to treat recovery so far made as full and final settlement of arrears of tax and interest due from petitioners. However, petitioners or any other partners of the firm are not entitled to claim refund of any payment alleging to be excess over amnesty dues.

C.N.RAMACHANDRAN NAIR
Judge

pms